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complaint should not be dismissed as non-jurisdictional because the evidence may indicate the respondent's awareness of the need for an accommodation. The documentation of the request is not a jurisdictional issue, but rather will be relevant to an evaluation of the merits of the complaint.

6. Accessibility Guidelines.

Reserved

C. **Activities Prohibited Under Section 805**

This section makes it unlawful for:

. . . any person or other entity whose business includes engaging in residential real estate-related transactions to discriminate against any person making such a transaction, because of race, color, religion, sex, handicap, familial status, or national origin.

The definition of the term "residential real estate-related transaction" provided within the Act makes clear that mortgages, construction loans, home equity loans, and home improvement loans are all covered. In addition, the Act specifies that discriminatory appraisals are prohibited, while specifying that factors other than race, color, religion, national origin, sex, handicap, or familial status may be considered in assessing property values.

Under this section, banks and other lending institutions may not set aside or weigh differently income--such as SSDI, or payments from a private disability insurance policy--received by a mortgage applicant because of disability. (Mortgage underwriters may, however, require that applicants provide information on the expected duration of SSDI payments in the same manner that the likelihood of continued employment is investigated and considered by underwriters).

1. Pre-Application Coverage. This section may also be used to address discrimination that occurs prior to the filing of a mortgage application. For example, this section would provide coverage for the complaint of a minority couple who alleged that the loan originator at

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their bank discouraged them from applying for a mortgage because of their race. Home-seekers who are told that no one at the bank is available to help them, or that they will have to submit a deposit with their mortgage application, or who are in other ways treated differently than persons of other groups seeking information on mortgages, may file a complaint under this section.

2. Refinancing, Home Equity Loans, and the Secondary Mortgage Market. Because interest rates fluctuate from year to year, homeowners who have satisfied a portion of their initial mortgage and who have **equity** in their homes, may wish to refinance their mortgages in order to obtain a lower interest rate. The prohibitions found at Section 805 of the Act prohibit discrimination in these transactions as well. Homeowners with equity in their property may also wish to obtain a loan secured by their property equity (a home equity loan) in order to satisfy other bills, because of certain federal tax advantages. Section 805 prohibits discrimination in these transactions as well.

Most mortgages underwritten by banks and mortgage lending companies are subsequently sold to a secondary lending institution. Purchasers of loans in the secondary market may purchase only the right to the money paid on the loan, while contracting with the institution which originated the loan to continue "servicing" the loan by collecting the payments, maintaining the necessary escrow accounts, and managing payment of taxes and insurance fees. Or, the purchaser of the loan can acquire all of the rights under the loan transaction and service the loan itself. Adverse actions in the servicing of loans sold in the secondary mortgage market can also be the subject of complaints filed under the Act.

The best-known secondary mortgage market is Fannie Mae, an institution created by the government in order to guarantee that funds would be available to support home ownership. Banks and mortgage lending companies are interested in insuring that the mortgages they write will be marketable on the secondary mortgage market, therefore, the standards by which the secondary market evaluates mortgages have a direct effect on the standards applied by the primary mortgage lenders.

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The 1988 amendments to the Act explicitly state that coverage of this provision extends to the secondary mortgage market. Section 805 prohibits discrimination in the practices of the secondary mortgage company. For example, the president of a bank writing mortgages in both minority and non-minority neighborhoods, who noted that one of the sources to whom he sold his mortgages would only buy mortgages located in the non-minority areas, would be permitted to file a fair housing complaint under Section 805. A minority-owned mortgage company which believed that its loan portfolios were subjected to stricter standards than were the loan portfolios of non-minority owned companies could also file a complaint against a secondary mortgage market entity.

3. Redlining. Another practice prohibited under this section is known as "redlining." The term "redlining" refers to a policy of excluding specific geographic areas from the consideration for investment. Redlining can occur in mortgage-lending or home-equity lending. Areas targeted for redlining are frequently inner-city areas with a large percentage of lower-income/minority households.

A homeowner seeking a renovation loan, for example, may suspect that her rejection is based wholly upon the address of the property she wishes to renovate rather than upon an appraisal and inspection of the property, a review of her income and credit rating, or other legitimate considerations.

Occasionally it will be alleged that a lender will do business in a given area but has adopted either a minimum loan amount or an across-the-board limit to the amount of money which may be advanced to any single property in the area. A minimum loan amount, imposed over a large, economically and racially mixed area, may result in red-lining of less affluent areas wherein a minority group is concentrated. An arbitrary ceiling on loan amounts within a given area might also be a form of redlining.

Mortgage companies and other lenders are required by regulation and business necessity to assess the actual risk factors involved in each decision to advance funding. They may not, however, deny whole communities

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the tools critical to building home-ownership, stability, and prosperity, based upon the race, color, religion, etc. predominate in the community.

**D. Activities Prohibited Under Section 806**

This section makes it illegal to:

... deny any person access to or membership or participation in any multiple-listing service, real estate brokers' organization or other service, organization, or facility relating to the business of selling or renting dwellings, or to discriminate against him in the terms or conditions of such access, membership or participation on account of race, color, religion, sex, handicap, familial status, or national origin.

This section prohibits discrimination in the provision of professional opportunities in real estate by restricting membership in the associations necessary for success.

Prior to passage of the Act, patterns of segregation were perpetuated, in part, by limiting the access of minority real estate agents and brokers to professional organizations and credentials. Multiple-listings of homes in White neighborhoods would be available only through professional associations which restricted membership on the basis of race. Minority real estate brokers, in reaction, established their own multiple-listing services and professional associations and published information about homes for sale in predominantly minority communities.

The Act made it illegal to "lock-out" agents and brokers from important professional associations on the basis of race or any other of the prohibited factors. The Act seeks to ensure that all agents and brokers have equal access to business information and opportunities.

**E. Activities Prohibited under Section 818**

This section makes it illegal to:

...coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, or on account

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of his having exercised or enjoyed, or on account of his having aided or encouraged any other person in the exercise or enjoyment of any right granted or protected by section 804, 805, or 806 of this title.

This section prohibits all persons from harassing or interfering with other persons who are enjoying their rights under the Act. This section is also cited as prohibiting retaliation against anyone who has filed a fair housing complaint, encouraged or assisted another person in the filing of fair housing complaint. Thus, an investigator who has been harassed or intimidated by a respondent because of his or her proper performance of duties, can file a complaint under this section.

1. Violations by Persons other than Housing Providers. The prohibitions found at Section 818 of the Act apply, potentially, to everyone. Unlike the sections of the Act described earlier, the applicability of Section 818 does not depend upon a business relationship or housing arrangement between the complainant and the respondent. For example, the owners of a mobile home who wished to sell a unit and alleged that their neighbor removed signs advertising an "open house" because of fear that they might sell to a family with children, would be alleging a Section 818 violation. A real estate agent threatened with dismissal because of her sale of a home to an African-American in an all White subdivision, could claim a violation of 818 on the part of her employer. The family of an HIV-positive child could also file under Section 818 if their neighbors threw eggs at their home and left a note telling them that they should move. (Note that, if severe and threatening enough, this behavior could also constitute a violation of Section 901.)
2. Sexual Harassment Under Section 818. Sexual harassment cases of the "hostile environment" type (defined in Chapter 2, Theories of Discrimination), may allege a violation of Section 818. For example, a female tenant whose landlord told her dirty jokes, teased her about her "love-life," threatened to evict her if she did not go out with him, or left a pornographic magazine outside her apartment could file under Section 818. The essence of this tenant's allegation would be that the landlord intimidated and threatened her, and interfered with her enjoyment of her housing rights, because of her sex.

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3. Retaliation Prohibited. Retaliation against persons who file fair housing complaints is prohibited by this provision of the Act. The Department has jurisdiction to investigate allegations of retaliation against persons who have filed fair housing complaints even if the original complaint proved non-jurisdictional, or unfounded.

**Example:** A female tenant alleged that her landlord raised her rent because she had refused to have a sexual relationship with him. Investigation revealed that the landlord had raised the rent paid by all tenants of a specific tenure. No evidence was found that the landlord had either required sex as a condition of a tenancy or harassed the complainant. The complaint was therefore closed. Approximately a month after the closing documents were issued in the original complaint, the complainant called to say that her landlord was threatening her with eviction because he viewed her as "a troublemaker." This new complaint is jurisdictional and may be shown to be valid despite the dismissal of the original complaint. The landlord would not be within his rights to evict the complainant merely because of her exercise of her fair housing rights.

4. Section 818 and Rights Protected by the First Amendment

The First Amendment to the United States Constitution guarantees the right to freedom of speech and particularly freedom to peacefully petition public officials, the judicial system, and/or the public at large. The right to free speech can cancel the Department's jurisdiction over certain types of 818 claims.

The rights protected under the First Amendment are not unlimited. Restrictions can be placed on commercial speech, such as advertisements or statements made by persons in the real estate business, as the prohibitions found at Subsection 804(c) of the Act demonstrate. On the other hand, the constitutionally-protected right to free speech supersedes rights guaranteed only by federal statute. Occasionally persons who believe that another person's exercise of free political speech is

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interfering with their fair housing rights have attempted to file complaints with HUD. In a common scenario, the residents of a drug and alcohol-free group home, all recovering substance-abusers, might find their right to continue to reside in a given community challenged. The residents may wish to file a fair housing complaint against a local neighborhood group which has launched a petition drive, sent letters to public officials, and held public meetings in an effort to have the group home closed. The complainants may even provide evidence that the only reason for their presence in the community being challenged is their status as recovering substance-abusers, i.e., persons with disabilities. In such instances, First Amendment rights supersede the rights protected under the Act, and the Department generally cannot take action against, or even investigate, the neighborhood group because it is engaging in constitutionally protected speech. However, threats of imminent harm or other conduct (as opposed to speech) which is threatening or intimidating, are not protected.

When a complaint contains allegations which potentially raise First Amendment issues, the known facts of the complaint should be summarized in a memorandum and referred to the Assistant Secretary's Office. The Assistant Secretary's Office must approve the acceptance of such cases prior to any investigative activity--including the issuance of notification letters--being undertaken.

#### **F. Section 901**

This section provides criminal sanctions for any person who:

... whether or not acting under color of law, by force or threat of force willfully injures, intimidates, or interferes with, or attempts to injure, intimidate or interfere with, or attempts to intimidate or interfere with...

any person because of their race, color, religion, sex, national origin, handicap, or familial status, or because of their enjoyment of rights secured under the Fair Housing Act, or because of their efforts to encourage or assist others in enjoyment of these rights. Like Section

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818, Section 901 offers protections to FHEO investigators. An investigator threatened with violence or actually victimized because of his or her or pursuit of proper duties would be permitted to file a criminal complaint under Section 901.

Section 901 imposes fines, or escalating terms of imprisonment, for persons convicted of conduct resulting in bodily injury to an aggrieved person, or for threatening such conduct. Section 901 provides for imprisonment for "any term of years or for life" as the punishment for conduct resulting in death.

1. Defining the Terms of Section 901. A person is said to act under "color of law" when he or she deliberately misuses his or her legitimate authority as a Federal, State or local official in a manner which violates the legal rights of someone protected under a Federal, State, or local law. Such actions are described as "colorable" because the person who commits them appears in all respects to have full legal authority to exercise their official power, but is in fact abusing that power in order to achieve an unlawful goal.

"Willful" conduct is an action which a person undertakes deliberately, voluntarily, and intentionally.

2. The Purpose of Section 901. Section 901 is intended to prohibit housing-related acts of violence motivated by a prohibited basis or in retaliation for assisting other persons in the exercise of their rights under the Act.

Section 901 prohibits cross-burning as a means of driving an individual from a specific property, desecration of property, the scrawling of racial epithets on private property, threats of violence, and fire-bombing or attempted fire-bombing. To summarize, Section 901 prohibits all acts of violence against people and property which have a discriminatory motive and are related to housing.

Violations of Section 901 are investigated by the Department of Justice, through the Federal Bureau of Investigation (FBI). HUD's jurisdiction over Section 901 complaints is defined by the Memorandum of Understanding that exists between HUD and DOJ. Essentially, HUD has authority only to accept and



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forward the complaint with all possible speed, to DOJ for investigation.

3. How Section 901 Differs from Section 818 of the Fair Housing Act. Section 901 is a Federal criminal statute. A person who is believed to have violated Section 901 is placed in the position of a defendant facing criminal charges before a Federal Court. The prosecuting party is the United States. If convicted, the defendant faces the possibility of fines, imprisonment, or both. The criminal fines which the Court may impose upon a respondent convicted under Section 901 are unrelated to the injuries suffered by the aggrieved person. These fines are paid into the Federal Treasury, not to the complainant.

In contrast, a respondent in a civil action (such as a complaint filed under Section 818, or 804 of the Fair Housing Act) is subject to injunctions, damages for the injured party, and civil penalties or punitive damages but not to imprisonment for engaging in discriminatory housing practices.

Both Sections 818 and 901 prohibit threats, intimidation, and interference with the rights of an aggrieved person. It is therefore possible for violations of Sections 818 and 901 to overlap. The elements of the complaint which will determine whether it is properly filed under Section 901 or Section 818, or both, include:

- The persistence and frequency of the discriminatory acts;
- The severity of the discriminatory acts; and
- The likelihood, or the occurrence, of violence.

**Example:** A Black family receiving Section 8 assistance leased a private home in a homogeneously White neighborhood. During the first weeks of their tenancy, the family received threatening and racially defamatory notes from an unknown source. After about a month of tenancy, the complainant mother was walking around her yard when she noticed a glass bottle lying in the grass near the house. The bottle proved to be full of

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gasoline and had a strip of twisted cloth stuffed into the top. The complainant mother reported this incident to the police, who identified the bottle as a crude homemade fire bomb. The complainant mother's complaint was accepted as a Section 901 complaint. In addition, the complaint was processed under 818.

4. Proceeding under Section 901 and Other Sections of the Act. Section 901 complaints may involve actions which are prohibited under several different types of law. A case of attempted fire bombing motivated by ethnic hatred, as illustrated above, may violate state and local laws against arson, reckless endangerment, trespassing, and so forth. In addition, the attempt, if viewed as a criminal act interfering with the victim's right to fair housing, could be categorized as a violation of Section 901. The attempted fire-bombing would also violate Section 818, the federal civil statute prohibiting interference with persons in the enjoyment of their right to fair housing. Thus, this single action could be investigated by local authorities, the FBI and HUD investigators. The perpetrators would be subject to different proceedings and sanctions under each set of laws.

Circumstances which may constitute a violation of Section 901 are to be promptly referred to the Housing and Civil Enforcement Section of the Department of Justice. Investigation of overlapping allegations should be coordinated with the FBI and other law enforcement officials to prevent duplication of effort or possible unintended affects on criminal proceedings.

### **3-6 PROHIBITED BASES AND JURISDICTION**

#### **A. Importance of the Prohibited Bases**

In order for the Department to have jurisdiction over a complaint of unlawful housing practices, the complainant must indicate that the respondent's actions were motivated by one of the prohibited bases, or had a disproportionate negative effect upon a group defined by one of the prohibited bases. The term "prohibited bases" is used here to refer to characteristics associated with the complainant, the complainant's clients or associates

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(including family members), or the neighborhood in which a complainant wishes to reside, which must not influence the outcome of a housing-related transaction.

Occasionally, complainants raise allegations that they have been treated unfairly for reasons other than the prohibited bases. Examples include complainants who state that the respondent "just doesn't like them" or that the respondent rejected them because of their poor credit history, or lack of stable income, or because household members are known to have been convicted of violent crimes. Unless the complainant alleges, or the facts suggest, that one or more of the prohibited bases are a factor in the respondent's actions (or that the respondent's policies have a discriminatory effect on a group of persons who fall within one of the categories recognized as a prohibited basis), HUD does not have jurisdiction over the complaint and it should not be filed.

#### **B. Defining the Prohibited Bases**

The Act prohibits consideration of race in housing-related decisions regardless of the race involved. (An exception to this rule might be made where a Consent Decree or Conciliation Agreement aimed at integrating a community requires consideration of race). A complaint of race discrimination may be brought by White, Black, Asian or Native American persons with equal validity. Similarly, a case of discrimination based upon national origin may be filed by a person alleging discrimination on the basis of being Japanese, or by a person alleging discrimination on the basis of not being Japanese.

Each of the prohibited bases identified by the Act are defined below:

1. Race: The following categories of race are recognized by the Office of Management and Budget.
  - White (not of Hispanic origin): All persons having origins in any of the original peoples of Europe, Northern Africa or the Middle East.
  - Black (not of Hispanic origin): All persons having origins in any of the Black racial groups of Africa.

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2. Color: Occasionally, persons will allege that they have been discriminated against because of the color of their skin, rather than because of race.

For example, color discrimination can occur between light-skinned African-Americans and darker-skinned African-Americans. Color discrimination may also exist among persons from the South and Central Americas, where the population, like the population of North America, is descended from many different ethnic groups. Color discrimination may operate within a community of persons from the continent of India, where different degrees of pigmentation are associated with different ethnic or religious groups.

It is a mistake to assume that because a complainant and a respondent are both Black--or both Hispanic, Asian, or White--that there can be no prohibited discrimination between them.

3. Religion: Religious discrimination may manifest itself as a preference for or against the members of a particular religious group. Religious discrimination might also be evidenced as an intolerance for observation of religious laws regarding dress, dietary habits, and work schedules. Religious discrimination could involve a housing provider who practices evangelism among unwilling tenants, or who provides superior services to tenants who participate in prayer meetings and Bible studies, or who otherwise meet the landlord's religious-based criteria.
4. Sex: Sex discrimination includes any treatment of home-seekers, tenants, or loan applicants because of gender. Sex discrimination can be and has been alleged by men as well as women. Sex discrimination may occur when a landlord rents to single women and not to single men, or vice versa. It may also occur when there are different requirements regarding children of different sexes, as for example, prohibiting children of different sexes from sharing bedrooms.

An analysis of the issues of sexual harassment, another manifestation of sex discrimination, are included in the Chapters 2 and 7, Theories of Discrimination, and Planning and Conducting the Investigation.

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5. National Origin: The Department has found discrimination in cases in which persons of a particular national origin adopted restrictive covenants requiring that homes within their neighborhood could only be sold to persons of the same origin. In at least one case, proof of citizenship requirements have been challenged as having a disparate impact based on national origin. On the other hand, it may not be illegal to require all applicants for a lease or mortgage to provide proof of immigration status or citizenship. The applicant's ability to remain in place, maintain a steady income, and pay a lease or mortgage, is fundamentally relevant to a rental and home sale agreement.

At present, the fastest growing segment of the immigrant population in the United States is Hispanic, and the Office of Management and Budget has accordingly created a definition of this statistically important group:

- Hispanic: All persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish culture or origin, regardless of race.

Other national origin categories include:

- Asian or Pacific Islander: All persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Sub-Continent, or the Pacific Islands. This area includes, for example, China, Japan, Korea, the Philippine Islands, and Samoa.
- American Indian or Alaskan Native: All persons having origins in any of the original peoples of North America and who maintain cultural identification through tribal affiliation or community recognition.

Sometimes national origin discrimination may operate in conjunction with race or color discrimination. Dark-skinned persons from Pakistan, for example, may believe that they have been treated unfairly because of their skin color, their accent and mannerisms, and because they are from Pakistan.

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6. Familial Status: The term "familial status" refers to the presence of children under the age of eighteen domiciled in a household. Adopted by law as a prohibited basis in 1988, the familial status basis differs from the bases defined in numbers 1 through 5 above in that only some persons have standing to claim this basis. The language of the Act recognizes that children may be part of a household because of birth, adoption, or the assignment of legal guardianship over the child. A person who is known to be in the process of seeking legal guardianship of a child and who consequently experiences discrimination, has standing to file a fair housing complaint with familial status as the basis. A single pregnant woman is also considered "a family" within the meaning of the Act, and is protected from discrimination on the basis of familial status. A foster family, in the process of seeking custody of children, and/or the written designee of a minor child's parents are also protected by the Act.
7. Handicap: This basis, like the familial status basis, may only be claimed by certain individuals who satisfy the regulatory definition. The regulations specify that a person with a handicap is one who:
- has a physical or mental impairment which substantially limits one or more of such persons major life activities; or
  - has a record of having such an impairment, or
  - is regarded as having such an impairment.

Certain physical conditions, such as paralysis, profound vision impairment, or the loss of one or more limbs, are readily recognized by the public as a "handicap." Note, however, that the Act still requires that such a disability constitute an impairment, or having a record of an impairment, or result in the perception of an impairment. Other conditions which may confer protected status, are less obvious and more likely to be challenged by respondents. For example, persons infected with Human Immuno-Deficiency Virus (HIV) may be considered to be handicapped for purposes of the Act, although they may not exhibit any signs of the disease. Persons who experience physical, mental and emotional disturbances when exposed to extremely low

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concentrations of common chemicals are said to have Multiple Chemical Sensitivity (MCS). Complainants in fair housing complaints based upon MCS may have their right to claim handicapped status disputed by housing providers, and even questioned by judges. Nevertheless, the Department has issued charges finding that MCS constitutes a handicap as defined by the Act.

Alcoholism is a covered handicap whether the individual is in recovery or not. The Act specifies, however, that persons with disabilities may lawfully be held to the same standards of behavior as non-disabled persons. Housing providers are not obliged to accept individuals as tenants if, as a result of their disability, they engage in behavior which poses a direct health and safety hazard to others.

The definition of handicap, as used in the Fair Housing Act, does not include current illegal use of, or addiction to, a controlled substance, although persons in recovery from addiction who abstain from any further drug use, are protected. Formerly drug-addicted persons who are denied housing based upon a conviction for the distribution or manufacture of a controlled substance, may not, under the Act, claim that this conviction should be disregarded. This is because Paragraph 807(b)(4) explicitly states that **nothing** in the Act shall be construed as prohibiting conduct against a person on this basis.

Note that the Act provides standing to those persons who are associated with persons with a handicap.

### 3-7 RES JUDICATA

The term res judicata means "matters already judged." Legally, the principle of res judicata refers to the principle prohibiting a court hearing and ruling upon questions which have already been settled in a courtroom of roughly equivalent stature. In practical terms, the principal of res judicata sometimes means that HUD cannot accept a complaint, or that a complaint which has been accepted must be closed, because the courts have already heard and ruled upon the issues of the complaint. Section 810 g(4) of the Act specifies:

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The Secretary may not issue a charge under this section regarding an alleged discriminatory housing practice after the beginning of the trial of a civil action commenced by the aggrieved party under an Act of Congress or a State law, seeking relief with respect to that discriminatory housing practice.

In other words, if a complainant has either commenced a civil trial based upon his or her claim of discrimination under the Fair Housing Act (an "Act of Congress," according to the language above) or a state law which has been judged substantially equivalent by the Department, HUD cannot issue a charge in such a complaint and cannot bring the complaint before the court for a second time.

The Act speaks only to the authority of the Secretary to issue a charge in matters that have already been adjudicated. It is HUD's policy, however, not to accept for filing any complaints in which it is clear that we would be prohibited from issuing a charge because of the principle of res judicata.

Remember that the prohibition against issuing a charge on a matter which has already been tried or which is being tried applies only after the trial has commenced. The complainant may indicate that they intend to file a civil suit through a private attorney once HUD concludes its investigation--this would not affect the investigation or the issuing of a charge. The complainant may even have served the respondent with papers commencing the litigation. The investigation is not, however, affected until the trial begins or until there is a final disposition of a case where there is no trial (for example, in cases decided by a judge based on the briefs filed by each party.)

When HUD receives a complaint and forwards it to a substantially equivalent state or local agency, and that agency issues a finding which is appealed to court where a final decision is made, HUD is barred from issuing a charge in the matters of the complaint because of the principle of res judicata. HUD is not legally bound by an agency decision made by a substantially equivalent agency. As a policy matter, however, HUD generally adopts the agency decision and declines to pursue the case further.



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Somewhat more difficult to analyze are situations in which the complainant and respondent have appeared in court to argue certain aspects of their dispute, but it is not clear whether the court had the authority or opportunity to consider the discrimination issues raised by the fair housing complaint. For example, a complainant and respondent may have been through an eviction hearing which resulted in the respondent winning an eviction order based upon non-payment of rent. If the complainant now wishes to file a complaint alleging that the eviction was based upon the respondent's unwillingness to accommodate his or her handicap, is the consideration of the claim barred by res judicata?

In the example given above, HUD would continue to have authority to accept, investigate, and, if appropriate, charge the complaint. City and county landlord-tenant courts may not have authority to issue rulings based upon claims of discrimination in housing. Further, they may not have provided a full, fair opportunity to litigate such claims, even if they have such authority. Consequently HUD has the authority and obligation to pursue the complaint.

Occasionally a complaint will involve multiple allegations and/or multiple bases, and it will be clear that a state or federal district court has heard and considered some--but not all--of the allegations. In such cases it is appropriate to accept for processing those of the complainant's allegations which have not been adjudicated, while rejecting for processing the issues which have been ruled upon.

Whenever a complex or novel question about res judicata arises, counsel should be consulted.





U. S. Department of Housing and Urban Development  
Washington, D.C. 20410-2000

January 26, 1996

OFFICE OF THE ASSISTANT SECRETARY  
FOR FAIR HOUSING AND EQUAL OPPORTUNITY



MEMORANDUM FOR: Fair Housing Enforcement Center Directors

FROM: Elizabeth K. Julian, Acting Deputy Assistant Secretary for  
Policy and Initiatives, EP

SUBJECT: Complaint Notification Letters

This memorandum advises you of my decision to make some changes in the Notification letters sent to both the complainant and respondent when a housing discrimination complaint is filed with FHEO. Effective immediately, all Enforcement Centers are expected to use the two attached letters appropriately when notifying parties to a complaint.

Attachments



Dear Complainant:

Subject: Housing Discrimination Complaint  
ABC vs. XYZ  
HUD Case No. XXXXXXXXXX

Your complaint, alleging one or more discriminatory housing practices, was officially filed on XX/XX/94 as a complaint under the Federal Fair Housing Law, 42 U.S.C. §§ 3601-19. For your records, we are enclosing a copy of your complaint, and, as required by law, a copy has been sent to the respondent(s).

The purpose of this letter is to inform you of:

- 1) the rights you have during the processing of this complaint,
- 2) the rights each respondent has in responding to this complaint, and 3) the steps the U.S. Department of Housing and Urban Development (the Department) will take to determine whether the complaint has merit.

In order to insure that the Department informs you properly of the law's requirements, this notification letter contains language required by the law. A similar letter is used to notify all parties whenever a formal complaint has been filed with the Department under the Federal Fair Housing Law.

We are governed by federal law which sets out what steps we must take when a formal complaint is filed. The law also includes steps which each respondent can take to answer or refute the allegations of this complaint.

Under federal law, a respondent can file an answer to this complaint or any amendment made to this complaint within 10 calendar days of receipt of the Department's notification letter to him or her. Each respondent's answer must be signed and affirmed that the response is truthful by including the statement "I declare under penalty of perjury that the foregoing is true and correct." A respondent can, with the agreement of the Department, amend his or her answer at any time during the investigation.

Our responsibility under the law is to undertake an impartial investigation and, at the same time, encourage all sides to reach an agreement, where appropriate, through conciliation. The law requires us to complete our investigation within 100 days of the date of the official filing of the complaint. If we are unable to meet the 100-day requirement for issuing a determination, the law requires that we notify you and the respondent and explain the reasons why the investigation of the complaint is not completed.

In handling this complaint, we will conduct an impartial investigation of all claims that the Fair Housing Act has been violated. If the investigation indicates that there is not evidence establishing jurisdiction, the case will be dismissed. At any point, you can request that our staff assist you in conciliating (or settling) this complaint with the respondents. If the case is not resolved, we will complete our investigation and decide whether or not the evidence indicates that there has been a fair housing violation. If the parties involved have not reached an agreement to settle the complaint, the Department will issue a determination as to whether there is reasonable cause to believe a discriminatory housing practice has occurred.

If our investigation indicates that there is reasonable cause to believe that an unlawful discriminatory housing practice has occurred, the Department must issue a charge. If the investigation indicates there is no reasonable cause to believe that discrimination has occurred, the complaint will be dismissed. In either event, you will be notified in writing.

If the determination is one of reasonable cause, the notification will advise you and the respondents of your rights to choose, within 20 days, whether you wish to have the case heard by an Administrative Law Judge, or to have the matter referred for trial in the appropriate U.S. District Court.

Under federal law, even if the Department dismisses the complaint, you still have the right to bring an individual suit under the Federal Fair Housing Law. You may file your lawsuit in an appropriate federal, state or local court within two years of the date of the alleged discriminatory practice or of the date when a conciliation agreement has been violated. The law does not count, as part of the two-year period, any of the time when a proceeding is pending with the Department. You also have the legal right to file a lawsuit in court, even if your complaint formed the basis for a charge, as long as an Administrative Law Judge has not started a hearing on the record with respect to the charge.

There may be other applicable federal, state or local statutes under which you may initiate court action. You may consult a private attorney in this regard.

The law also requires us to notify you that section 818 of the Fair Housing Act makes it unlawful for a respondent or anyone else to coerce, intimidate, threaten, or interfere with you in your exercise or enjoyment of, any right granted or protected under the Federal Fair Housing Law. The law also makes it illegal for anyone to coerce, threaten or interfere with you for

your having aided or encouraged any other person in the exercise or enjoyment of, any right or protection granted to them under the Federal Fair Housing Law.

Some explanatory material on the law is enclosed for your information.

If you have any questions regarding this case, please contact our office at XXX. Please refer to the case number at the top of this letter in those contacts, and keep this office advised of any change of your address or telephone number.

Sincerely,

Enclosures





Dear Respondent:

Subject: Housing Discrimination Complaint  
ABC vs. XYZ  
HUD Case No. XXXXXXXXXX

We have received a formal complaint alleging that you have engaged in one or more discriminatory housing practices under the Federal Fair Housing Law, 42 U.S.C. §§ 3601-19. We are required by statute to send you a copy of the complaint.

We are enclosing a copy of the complaint for you. The alleged discriminatory practices are identified in this complaint.

We have made no determination as to whether the complaint against you has merit.

The purpose of this letter is to inform you of:  
1) the rights you have in responding to this complaint,  
2) the rights the complainant has, and 3) the steps the U.S. Department of Housing and Urban Development (the Department) will take to determine whether the complaint has merit.

In order to insure that the Department informs you properly of the law's requirements, this notification letter contains language required by the law. A similar letter is used to notify the parties whenever a formal complaint has been filed with the Department under the Federal Fair Housing Law.

We are governed by federal law which sets out what steps we must take when a formal complaint is filed. The law also includes steps which you can take to answer or refute the allegations of this complaint.

Under federal law, any answer from you to this complaint can be filed within 10 calendar days of your receipt of this letter or receipt of a letter notifying you of any amendments to this complaint. Your answer must be signed and you must affirm that you have given a truthful response by including the statement "I declare under penalty of perjury that the foregoing is true and correct."

You will be allowed to amend your statement at any time, if our investigation shows that it is reasonable and fair for you to do so.

Our responsibility under the law is to undertake an impartial investigation and, at the same time, encourage all sides to reach an agreement, where appropriate, through conciliation. The law requires us to complete our investigation within 100 days of the date of the official filing of the complaint. If we are unable to meet the 100-day requirement for issuing a determination, the law requires that we notify you and the complainant and explain the reasons why the investigation of the complaint is not completed.

In handling this complaint, we will conduct an impartial investigation of all claims that the Fair Housing Act has been violated. If the investigation indicates that there is not evidence establishing jurisdiction, the case will be dismissed. At any point, you can request that our staff assist you in conciliating (or settling) this complaint with the complainant. If the case is not resolved, we will complete our investigation and decide whether or not the evidence indicates that there has been a fair housing violation. If the parties involved have not reached an agreement to settle the complaint, the Department will issue a determination as to whether there is reasonable cause to believe a discriminatory housing practice has occurred.

If our investigation indicates that there is reasonable cause to believe that an unlawful discriminatory housing practice has occurred, the Department must issue a charge. If the investigation indicates that there is no reasonable cause to believe that discrimination has occurred, the complaint will be dismissed. In either event, you will be notified in writing.

If the determination is one of reasonable cause, the notification will advise you and the complainant of your rights to choose, within 20 days, whether you wish to have the case heard by an Administrative Law Judge, or to have the matter referred for trial in the appropriate U.S. District Court.

The complainant has the legal right to file such a suit, even if the complaint formed the basis for a charge, as long as an Administrative Law Judge has not started a hearing on the record with respect to the charge. Under federal law, even if the Department dismisses the complaint, the complainant still has the right to file an individual lawsuit under the Fair Housing Law in an appropriate federal, state or local court within two years of the date of the alleged discriminatory practice or of the date when a conciliation agreement has been violated. The law does not count, as part of the two-year period, any of the time when a proceeding is pending with the Department.

There may be other applicable federal, state or local statutes under which you and/or the complainant may initiate court action. You may consult a private attorney in this regard.

The law also requires us to notify you that section 818 of the Fair Housing Act makes it unlawful for you, or anyone acting on your behalf, to coerce, intimidate, threaten, or interfere with any person in the exercise or enjoyment of, any right granted or protected under the Federal Fair Housing Law. The law also makes it illegal for anyone to coerce, threaten or interfere with any person for having aided or encouraged any other person in the exercise or enjoyment of, any right or protection granted to them under the Federal Fair Housing Law.

Some explanatory material on the law is enclosed for your information.

If you have any questions regarding this case, please contact our office at XXX. Please refer to the case number at the top of this letter in those contacts; and keep this office advised of any change of your address or telephone number. We hope this information has been helpful to you.

Sincerely,

Enclosures

